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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))

Docket Number (Optional)
BAIPAU P01AUS

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

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OFFICE OF PETITIONS

06/29/2010 DALLEN 00000009 6265983
01 FC:1599 700.00 OP

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6,265,983 Application Number: 09/408,798
Issue Date: 07/24/2001 Filing Date: 09/30/1999

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent: 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

- ☐ is a reissue of original Patent No. _____ original issue date _____;
original application number _____
original filing date _____
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

June 22, 2010
Date

/sdaniels68/
Signature

Scott Daniels
Typed or printed name of person signing Certificate

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

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2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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OFFICE OF PETITIONS

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input checked="" type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input checked="" type="checkbox"/> \$ <u>490.00</u>	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1240.00</u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 0.00

4. * SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 700.00☐ Please charge Deposit Account No. _____ the sum of \$ _____☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☒ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/sdaniels68/

Signature(s) of Petitioner(s)

June 21, 2010

Date

Scott A. Daniels

Typed or printed name(s)

42,462

Registration Number, if applicable

43 Centre Street

Address

603 226 8610

Telephone Number

Concord, NH 03301

Address

ENCLOSURES:

- ☐ Maintenance Fee Payment
- ☒ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☒ Other:

PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN
AN EXPIRED PATENT UNER 37 CFR 1.378(B)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/sdaniels68/

Signature

June 21, 2010

Date

Scott A. Daniels

Type or printed name

42,462

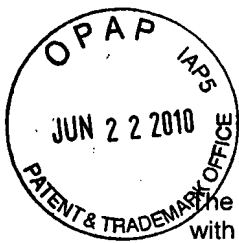
Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Please see attached.

(Please attach additional sheets if additional space is needed)



Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Petition for Revival of:

U.S. Patent No. 6,265,983

Patentee: Paul D. Baillargeon

FALL PROTECTION SYSTEM
AND METHOD

Application Serial No.: 09/408,798

Issued: July 24, 2001

Primary Examiner: Jeffery Hofsass

Attorney Docket No. BAIPAU P01AUS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

FEES PAID

Maintenance Fee Payment and penalty under 1.20 (i)(2) previously submitted on December 17, 2009 under 37 CFR 1.378(c). See Exhibit E.

Surcharge under 37 CFR 1.20 (i)(1) – \$700 is attached.

Sir:

PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT
UNDER 37 CFR 1.378(b)

The following Petition under 37 C.F.R. 1. 378(b) is necessitated by the unavoidable delay in the payment of Maintenance Fees for Patent No. 6,265,983, the ("983" Patent) issued on July 24, 2001 to Petitioner, Paul Baillargeon entitled, FALL PROTECTION SYSTEM AND METHOD. This Petition asserts that Petitioner undertook the care required of a reasonable prudent person to ensure timely payment of the Maintenance Fees of the '983 Patent and that when non-payment was discovered, A Petition to reinstate were timely filed.

As set forth in detail below and as shown in the attached Declarations of Attorney Daniel Bourque (Ex. A) and Paul Baillargeon, (Ex. B), delay in payment of the Maintenance Fees was unavoidable due to (1) the apparent malfeasance of a third party independent of and beyond the control of either Petitioner Baillargeon or his Patent Attorney Bourque, and (2) due to the fact that all correspondence during prosecution of the '983 patent between Petitioner and his Attorney Bourque took place via email, and that after issuance of the '983 patent Attorney Bourque no longer communicated with Petitioner via email but sent all correspondence to Petitioner via written letters and regular mail and to the address of the third party.

PETITIONER'S STANDARD OF CARE

The PTO has authority pursuant to 35 U.S.C. §41(c)(1) to accept the delayed payment of a maintenance fee after the grace period ends if the delay is shown "to the satisfaction of the Commissioner to have been unavoidable." Such a petition must include "[a] showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent and the steps taken to file the petition promptly." 37 C.F.R. § 1.378(b)(3). "[I]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person." *Ray v. Lehman*, 55 F.3d 606, 609.

REASONABLE CARE WAS TAKEN BY PETITIONER TO ENSURE
THAT THE MAINTENANCE FEE WOULD BE TIMELY PAID

Through his Attorney, Daniel Bourque of Bourque & Associates (B&A), the Petitioner filed the application for the '983 Patent on September 30, 1999. Upon issuance of the '983 Patent on July 24, 2001 the Petitioner was informed by Attorney Bourque the requirements for payment of maintenance fees on the issued patent. Based on Petitioner's instructions and intent to ensure that the maintenance fees were timely paid, the maintenance fee due dates for the '983 Patent were properly entered into Attorney Bourque's computerized docketing system (Decl. Daniel Bourque para. 2). Dates of all maintenance fees and dates for mailing client reminder letters were entered. (Decl. Daniel Bourque para. 2). The docketing of this information by a paralegal was rechecked by an attorney and all dates were also entered into a backup system having a print of all docketed dates. (Decl. Daniel Bourque para. 4). Each file was physically checked every 3 to 4 months to verify each due date. (Decl. Daniel Bourque para. 4) Each staff member receives training on the docketing system. (Decl. Daniel Bourque para. 5).

Attorney Bourque similarly took reasonable and prudent care to inform Petitioner of the maintenance fee dates and deadlines for the '983 Patent. The first maintenance fee was due on January 24, 2005. A maintenance fee letter (Ex. C) was sent July 27, 2004 by Attorney Bourque to the home address of the Petitioner on the date of the first maintenance fee window, and a copy of this letter was resent on each of the following dates; November 4, 2004, December 16, 2004 and January 17, 2005. (Decl. Daniel Bourque para. 7). None of the letters were returned to the office as undeliverable. (Decl. Daniel Bourque para. 12). No response was received from the

Petitioner to these letters. (Decl. Daniel Bourque para. 13). A post-abandonment letter (Ex. D) was sent by B&A on September 26, 2005 advising the Petitioner of the procedures required for late payment and that a response and late payment must be filed within 2 years. (Decl. Daniel Bourque para. 15). The post-abandonment letter was not returned to B & A as undeliverable. (Decl. Daniel Bourque para. 16). No response was received from the Petitioner to this abandonment letter. (Decl. Daniel Bourque para. 17).

THE PETITIONER'S DELAY WAS UNAVOIDABLE BECAUSE NEITHER
PETITIONER NOR HIS ATTORNEY COULD HAVE KNOWN THAT THE
SPOUSE WAS APPARENTLY DESTROYING THE MAINTENANCE FEE
CORRESPONDENCE

Unbeknownst to Attorney Bourque, on July 17, 2004 shortly before the first maintenance fee letter was sent by Bourque, the Petitioner was forced to move from his home due to irreconcilable differences with his spouse. (Decl. Paul Baillargeon para. 4). A divorce proceeding was commenced and the Petitioner was barred from entering his home now occupied by his spouse. (Decl. Paul Baillargeon para. 5). The Petitioner's spouse regularly contacted Petitioner and gave him mail that was mostly bills for the house and told the Petitioner that he had no other mail. (Decl. Paul Baillargeon para. 5). The Petitioner moved into an apartment with the intention that this apartment would only be a temporary residence with the expectation that he would return to reside in his own home after divorce proceedings were complete. (Decl. Paul Baillargeon para. 6). Since he was also receiving what he believed was all his mail, he therefore did not take the step of changing his address with the U.S. Post Office. (Decl. Paul Baillargeon para. 6).

During prosecution Petitioner received *all* correspondence from Attorney Bourque via email or phone, and Petitioner's email address has to this day, never changed. (Decl. Paul Baillargeon para. 7). Such actions are reasonable and prudent

for Petitioner where not only did he believe he was receiving all his mail from his spouse during their separation in 2004, but also that he had the expectation of returning to his home upon resolution of his family matters.

The Petitioner therefore was confident that he was receiving all of his mail and he took the appropriate steps and care by leaving the responsibility with Attorney Bourque to inform Petitioner of the due date for the maintenance fees. (Decl. Paul Baillargeon para. 6). For his part, Attorney Bourque also undertook the appropriate care by sending timely letters and reminders to Petitioner's home address. (Decl. Daniel Bourque para. 15). Unbeknownst to either Petitioner or Attorney Bourque, Petitioner's spouse was apparently destroying certain of Petitioner's mail and failed to forward any of Attorney Bourque's correspondence to Petitioner. Petitioner's spouse also insisted that there was no other mail for the Petitioner. (Decl. Paul Baillargeon para. 5).

THE PETITIONER'S DELAY WAS ALSO UNAVOIDABLE BECAUSE
PETITIONER'S CORRESPONDANCE WITH HIS ATTORNEY HAD ALWAYS
OCCURRED VIA EMAIL, AND IT WAS REASONABLE TO RELY UPON
EMAIL COMMUNICATION FOR RECEIVING SUCH MAINTENANCE FEE
NOTICES

During this time period, Petitioner was in contact via email with Attorney Bourque. (Decl. Paul Baillargeon para. 7). Importantly, during the prosecution of the patent all correspondence between the Petitioner and B&A was done through email or phone. (Decl. Paul Baillargeon para. 7). The Petitioner has kept and still uses the same email address. (Decl. Paul Baillargeon para. 7). Because of the consistent email communication with Attorney Bourque in the normal course of business and prosecution, and despite moving to a permanent address in July 2005, Petitioner had no idea that he had been sent the maintenance fee letters, and did not know of their existence or apparent destruction and assumed all correspondence with Attorney

Bourque would continue via email. (Decl. Paul Baillargeon para. 8). The docketing system of B&A only requires the mailing of first class letters and confirmation of delivery is made by not having a letter returned as undeliverable. (Decl. Daniel Bourque para. 7&12). Neither Attorney Bourque, nor Petitioner were aware of the destruction of the mailed correspondence by Petitioner's spouse. Therefore, based on the open communications maintained with his patent attorney, it is reasonable and prudent for Petitioner to assume that any correspondence with Attorney Bourque would also be received via email.

In December 2009, the Petitioner contacted B&A through email requesting the status of the '983 Patent and received information that two of his patents had been abandoned due to non-payment of maintenance fees. (Decl. Paul Baillargeon para. 9). Upon learning of the abandonment, Petitioner immediately provided all of the necessary fees and penalties to B&A to file a reinstatement of each of these patents. (Decl. Paul Baillargeon para. 10). Almost immediately, on December 17th, 2009, B&A filed a Petition for Revival of a Patent Abandoned Unintentionally. (Ex. E) This petition was denied because it was filed outside of the two years from the abandonment date. (Decl. Paul Baillargeon para. 11). **The necessary maintenance fees and penalties remain with the United States Patent and Trademark Office from the previous petition in this case and have not been returned to the Petitioner.** (Decl. Paul Baillargeon para. 10). Therefore in accordance with the duty of due care Petitioner immediately upon learning of the abandonment promptly filed the petition to correct the abandonment and the expiration of the patent.

THE PETITIONER'S EXPECTATION OF CONTINUED EMAIL COMMUNICATIONS WITH HIS ATTORNEY WAS REASONABLE AND THE STEPS TAKEN BY BOTH PETITIONER AND HIS ATTORNEY TO PROVIDE

APPROPRIATE COMMUNICATION CHANNELS REGARDING
MAINTENANCE FEES WAS REASONABLE AND PRUDENT

The Petitioner should be granted a petition to revive the issued patents because there was a reasonable docketing system in place; steps were taken by Petitioner to maintain communication via email with his patent attorney, and a Petition was filed immediately upon learning of the abandonment of his patent.

The delay was unavoidable because Petitioner was denied any information relating to correspondence from his Patent Attorneys, and believed that he had been receiving all mail from his home address. Further, the Petitioner had always communicated with his Patent Attorney through email and reasonably believed that any future correspondence would be through this medium, particularly an urgent correspondence of the pending abandonment of his issued patents. It is not unreasonable in this day and age, especially where all prior correspondence with his patent counsel took place via email, to rely upon email to receive important updates and correspondence. Further, upon learning that his patents were abandoned, the Petitioner immediately took steps to obtain reinstatement of the patents filed with all of the necessary maintenance fees and penalties. The Attorneys of B&A immediately filed the petition to correct. The necessary fees and penalties are currently held by the United States Patent and Trademark Office and have not been returned to the Petitioner.

The Petitioner understands that the responsibility of payment of these fees falls to him, however in a review of the specific facts of this case, Petitioner's family situation and his state of mind of the Petitioner should be considered. The Petitioner was going through an unsettling time in life with the divorce, he lost the home he had lived in for many years, and he was faced with the distractions and stress of such difficulties. He further had the expectation that all correspondence, particularly

critical correspondence of the abandonment of his patents, would be engaged in through the normal manner that the offices of B&A had always done in the past, namely by email. He was unaware that any correspondence would occur via regular mail, and neither party were aware of the apparent destruction of the correspondence. As soon as notice was given to the Petitioner of the non-payment of fees, he immediately took steps to rectify the situation, pay the fees and have the patents reinstated. Filing an incorrect petition under 37 C.F.R. 1. 378 (c) was not the fault of the Petitioner. In view of these facts and the proof attached hereto in the form of the Declaration of Daniel Bourque (Ex. A), the Attorney for B&A, the Declaration of Paul Baillargeon (Ex. B), the Petitioner and the Exhibits C, D and E a finding in support of this petition is reasonable in that a reasonably prudent person faced with the dilemmas of this Petitioner would have taken the same actions in failing to make maintenance fee payments for his patents and that the failure to make these payments was unavoidable.

Respectfully submitted,
Scott A. Daniels

sdaniels68/

Registration No. 42,462
Daniels Patent Law, PLLC
43 Centre Street
Concord, NH 03301
Telephone: (603)226-8610
Facsimile: (603)226-8611

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Petition for Revival of:

U.S. Patent No. 6,265,983

Patentee: Paul D. Baillargeon

**FALL PROTECTION SYSTEM
AND METHOD**

Application Serial No.: 09/408,798

Issued: July 24, 2001

Primary Examiner: Jeffery Hofsass

Attorney Docket No. BAIPAU P01AUS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

**DECLARATION OF DANIEL J. BOURQUE IN
SUPPORT OF PETITION UNDER 37 CFR 1.378(b)**

[001] I, Daniel J. Bourque, Esq. am the principal of the law firm Bourque & Associates Intellectual Property Attorneys, P.A. (B&A), a duly licensed New Hampshire Professional Association practicing in the area of intellectual property law and having an address at 835 Hanover Street, Manchester, NH 03104.

[002] I assisted in the prosecution of the above-identified '983 patent with the USPTO which issued on July 24, 2001. Based on this date of issue entered into our computerized docketing system by a paralegal, the computerized docketing system computed all of the appropriate due dates for all of the

maintenance fees under 37 C.F.R. 1.20 (e)-(g) for the '983 patent as well as dates for client reminder letters, and stored that information in our computer based docketing system.

[003] B&A utilizes a computer-based docketing system called Abacus for managing post-issuance patent related due dates. Entries to be made into the computer based docketing system by a paralegal are double-checked by an attorney. Various "rules" in the computerized docketing system in response to entered dates (such as the date of patent issuance) generate the actual individual due dates and action items for those due dates.

[004] As a backup docketing system to our computer-based docketing system, B&A utilizes a paper or printed version of the computerized docketed dates. In addition, every 3 to 4 months, each physical file is checked to insure that a computerized docketing entry has been recorded for that file and that the next docketed due date has not passed by.

[005] All B&A staff members responsible for docketing receive training in the computer-based docketing system.

[006] The first maintenance fee window for the above-identified patent opened on July 24, 2004, was due without surcharge on January 24, 2005 and closed on July 25, 2005.

[007] Maintenance fee reminder letters were sent to our client and owner of record of the patent, Paul D. Baillargeon, via USPS first class mail, postage prepaid, to his last known address set forth below, advising him that the first maintenance fee was due, on the following dates: first maintenance fee letter sent on July 27, 2004; a copy of this letter was resent on November 4, 2004,

December 16, 2004 and January 17, 2005. Copies of these letters (with costs redacted) are attached.

[008] The initial and reminder maintenance fee reminder letters were addressed to:

[009] Paul D. Baillargeon
[010] 103 Horse Corner Rd.
[011] Chichester, NH 03234

[012] None of the maintenance fee reminder letters were returned to our law firm by the post office as undeliverable.

[013] No response from the client to the maintenance fee reminder letters was received by B&A.

[014] A Notice of Abandonment from the PTO for the above-identified patent was received by B&A on or about September 26, 2005.

[015] On September 26, 2005, a post-abandonment letter was sent to Paul D. Baillargeon, via USPS first class mail, postage prepaid, at the same address listed above, including a copy the Notice of Abandonment and advising him of the procedures and time frame (2 years) required for late payment of the maintenance fee. A copy of this letter is attached.

[016] The post-abandonment letter was not returned to B&A by the post office as undeliverable.

[017] No response from the client to the post-abandonment letter was received by B&A within the two years set forth in the post-abandonment letter.

[018] I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that

willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

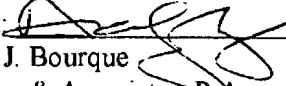
Signed:  Dated: 5-18-10
Daniel J. Bourque
Bourque & Associates, P.A.
835 Hanover Street
Manchester, NH 03104

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Petition for Revival of:

U.S. Patent No. 6,265,983

Patentee: Paul D. Baillargeon

FALL PROTECTION SYSTEM
AND METHOD

Application Serial No.:
09/408,798

Issued: July 24, 2001

Primary Examiner: Jeffery Hofsass

Attorney Docket No. BAIPAU
P01AUS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

**DECLARATION OF PAUL BAILLARGEON IN SUPPORT OF
PETITION UNDER 37 CFR 1.378(b)**

[001] I, Paul Baillargeon, am the Applicant and Inventor of the above-identified '983 patent and reside at 30 Granite Street, Suncook, NH 03275.

[002] I had this application filed and prosecuted by the Patent Attorneys of Bourque & Associates in Manchester, New Hampshire and the '983 patent issued on July 24, 2001.

[003] Upon issuance of the '983 patent I was told by Bourque & Associates

that maintenance fees would be docketed and I would receive reminders or notice prior to the due dates of these fees. I did not receive any reminders or notice of these fees.

[004] On July 17, 2004, I moved out of my house due to irreconcilable differences with my spouse and moved to a room rental in Allenstown, New Hampshire.

[005] My spouse refused to allow me into our home and divorce proceedings were filed on August 25, 2004. My spouse periodically contacted me and gave me my mail that was mostly bills for the house and told me I had no other mail.

[006] I lived in the room rental in Allenstown for almost 16 months and did not contact the United States Post Office to have my mail forwarded during that time, because this was only a temporary residence and I knew I would be able to move back into my house after the divorce settlement or be residing elsewhere.

[007] During the prosecution of this patent I had received all correspondence and updates from Bourque & Associates via email or phone. I have always kept the same email address and was available for correspondence.

[008] After moving to a new permanent address in November 2005, I directly contacted utility companies to setup new accounts and took no further steps to change or forward mail that had been sent to my original home address in Chichester, New Hampshire. Having never conducted any correspondence by regular mail where all prior correspondence and communications had been by email in the past from Bourque & Associates, I felt secure that I could be reached if and when necessary.

[009] After the patent issued, I received no further emails from Bourque & Associates until December 3, 2009 when I initiated contact with them through email to inquire on the status of the patents I held. I received a reply and information that two of my patents were abandoned due to non-payment of maintenance fees.

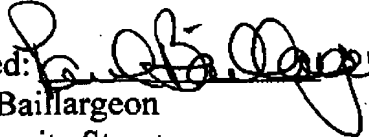
[0010] The information given to me via email from Bourque & Associates in December 2009 was that my patents could be revived with a petition for unintentional abandonment. Based upon this legal advice, I asked Bourque & Associates to file a petition to reinstate my patents and provided the necessary fees and penalties. These fees and penalties are currently still held by the USPTO waiting for a resolution of this petition.

[0011] The Attorneys at Bourque & Associates filed a Petition for Revival For a Patent Abandoned Unintentionally in December 2009 that was denied because it was filed outside of two years from the abandonment date, a Petition for Revival For a Patent Abandoned Unavoidably should have instead been filed.

[0012] While I respect that the responsibility of the fees for maintaining the '983 Patent lies with me as the Applicant, the failure in paying these fees was unavoidable in that I was unable to enter my former home after the date of July 17, 2004; and was unable to receive any information by regular mail; my mail was presumably discarded, and no contact was received from Bourque & Associates through the normal email channel of communication.

[0013] I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be

true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signed: 

Paul Baillargeon

30 Granite Street

Suncook, NH 03275

Dated: 6-14-10

EXHIBIT C

DANIEL J. BOURQUE
Admitted NH, MA
Canadian Patent Agent

PAUL J. KROON JR.
Admitted NH, MA

RICHARD J.
MUSGRAVE
Admitted MA, IL, MO

INTELLECTUAL PROPERTY LAW
PATENTS TRADEMARKS COPYRIGHTS
LICENSING AND RELATED
LITIGATION

July 27, 2004

Paul Baillargeon
103 Horse Corner Road
Chichester, NH 03234


RE: Fall Protection System and Method
Our Reference: BAILLAR-001AX

Dear Paul:

I am writing to inform you that the first patent maintenance fee on the above referenced U.S. Patent is due on January 24, 2005. We estimate that this fee will be approximately \$[REDACTED], which consists of \$455 for the U.S. Patent and Trademark Office fees, and \$[REDACTED] for our fees. We ask that you forward this amount to us with your instructions as soon as possible.

Very truly yours,

BOURQUE AND ASSOCIATES, P.A.

By: 
Daniel J. Bourque, Esquire

DJB/ms

EXHIBIT D

DANIEL J. BOURQUE
Admitted NH, MA
Canadian Patent Agent

PAUL J. KROON JR.
Admitted NH, MA

ANDREW MARTIN
Admitted MA

INTELLECTUAL PROPERTY LAW
PATENTS TRADEMARKS COPYRIGHTS
LICENSING AND RELATED
LITIGATION

September 26, 2005

Paul Baillargeon
103 Horse Corner Road
Chichester, NH 03234

RE: Fall Protection System and Method (PB only)
Our Reference: BAILLAR-001AX

Dear Paul:


The above referenced matter is deemed abandoned due to the failure to pay the maintenance fee due on July 25, 2005. A copy of the Notice of Abandonment from the US Patent Office is enclosed for your records. This patent can be revived by filing a "Petition to Revive" with the United States Patent Office within 24 months and thus, prior to July 25, 2007.

This letter is the final correspondence you will receive regarding the July 25, 2007 deadline. If we do not receive word from you prior to the deadline, we will assume that you do not want to revive the application.

Thank you for your attention to this matter. If you have any questions, please feel to contact this office.

Very truly yours,

BOURQUE AND ASSOCIATES, P.A.

By: 
Daniel J. Bourque, Esq.

DJB/nn
Enclosure

EXHIBIT E

Serial No.: 09/408,798
Filed: September 30, 1999
Patent No.: 6,265,983

Bourque & Associates, P.A.
835 Hanover Street, Suite 301
Manchester, NH 03104
Telephone: (603) 623-5111
Facsimile: (603) 624-1432

Date: 12-17-09

MAIL STOP PETITION

COMMISSIONER OF PATENTS

PO Box 1450
Alexandria, VA 22313-1450

Attorney Docket No.: BAILLAR-001AX

Sir:


In re application of: Baillargeon

Entitled: FALL PROTECTION SYSTEM AND METHOD

Transmitted herewith is:

- ☒ [X] A Maintenance Fee Payment Letter (2 pages) for the above-identified Patent.
- ☒ [X] A Petition To Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (3 pages) is hereby made, under 37 CFR 1.378 (c); a check in the amount of \$3,370.00 is enclosed per 37 CFR 1.20(i) (2)
- ☒ [X] No additional claim fee.
- ☒ [X] In the event a Petition for Extension of Time is required by this paper and not otherwise provided, such Petition is hereby made and authorization is provided herewith to charge Deposit Account No. 02-3285 for the cost of such extension.
- ☒ [X] The Commissioner is hereby authorized to charge payment of any additional filing fees under \$1.16 associated with this communication or credit any overpayment to Deposit Account No. 02-3285.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: MAIL STOP PETITION, Commissioner of Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on 12-17-09.


Attorney of Record: Daniel J. Bourque, Esquire
Registration No. 35,457


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application : Paul D. Baillargeon
Serial No. : 09/408,798
Filed : September 30, 1999
For : FALL PROTECTION SYSTEM AND METHOD
Examiner : N/A
Attorney's Docket : BAILLAR-001AX

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

12-17-09

By: 
Daniel J. Bourque, Esquire
Registration No. 35,457
Attorney for Applicant(s)

L E T T E R

3.5 YEAR MAINTENANCE FEE PAYMENT AND 7.5 YEAR MAINTENANCE FEE
PAYMENT

MAIL STOP PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

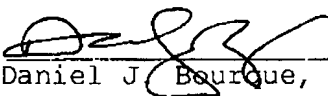
Enclosed herewith please find our check number 16461 in the amount of \$3,370.00. This check includes \$490.00 for the 3.5 year maintenance fees and \$1,240.00 for 7.5-year maintenance fees on Patent Number 6,265,983 issued on July 24,2001 to Paul D. Baillargeon as well as and \$1,640.00 for the surcharge fee.

In re: appl: Paul D. Baillargeon
Patent: 6,265,983
Granted: July 24, 2001
Serial Number: 09/408,798
Filed: September 30, 1999

- [X] In the event a Petition for Extension of Time is required by this paper and not otherwise provided, such Petition is hereby made and authorization is provided herewith to charge Deposit Account No. 02-3285 for the cost of such extension.
- [X] The Commissioner is hereby authorized to charge payment of any additional filing fees under \$1.16 associated with this communication or credit any overpayment to Deposit Account No. 02-3285.

Respectfully submitted,

Paul D. Baillargeon

By 
Daniel J. Bourque, Esquire
Registration No. 35,457
Attorney for Applicant(s)

Bourque & Associates, P.A.
835 Hanover Street, Suite 301
Manchester, NH 03101
Telephone: (603) 623-5111
Facsimile: (603) 624-1432

Date: 12-17-09

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378 (c))**

Docket Number (Optional)

BAILLAR-001AX

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. 6,265,983

Application Number 09/408,798

Issue Date July 24, 2001

Filing Date September 30, 1999

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above - identified patent

☐

Is a reissue of original Patent No. _____ original issue date _____

original application number _____

original filing date _____

☐

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____

filed on _____

CERTIFICATE OF MAILING (37 CFR 1.89(a))

I hereby certify that this paper (*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

12-17-09
Date

[Signature]
Signature

Daniel J. Bourque, Esquire

Typed or Printed Name of Person Signing Certificate

(page 1 of 3)

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee.	(1551)	<input checked="" type="checkbox"/> \$ 490.00	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ 1,240.00	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1,730.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ 1,640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of a maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 1,640.00

5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 3,370.00

☐ Please charge Deposit Account No. _____ the sum of \$ _____

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. 02-3285

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

7. OVERPAYMENT

As to any overpayment made please

OR ☒ Credit to Deposit Account No. 02-3285

☐ Send refund check


WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED


Signature(s) of Petitioner(s)12-17-09
Date

Daniel J. Bourque, Esquire

35,457

Typed or printed name(s)

Registration Number, if applicable

603-623-5111

Telephone Number

Bourque and Associates, PA

Address

835 Hanover Street, Suite 301, Manchester, N.H. 03104

Address

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

ENCLOSURES

- ☒ Maintenance Fee Payment
- ☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)
- ☐ _____

BOURQUE & ASSOCIATES, P.A.
835 HANOVER STREET STE. 301 PH. (603) 623-5111
MANCHESTER, NH 03104



54-153/114

16461

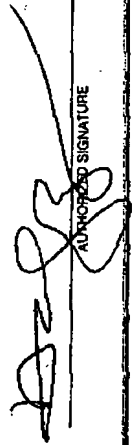
> THREE THOUSAND THREE HUNDRED SEVENTY DOLLARS AND NO/100

PAY

DATE Dec. 17, 2009 AMOUNT \$3,370.00

TO THE
ORDER
OF

UNITED STATES PATENT AND TRADEMARK OFFICE


AUTHORIZED SIGNATURE

[Redacted]

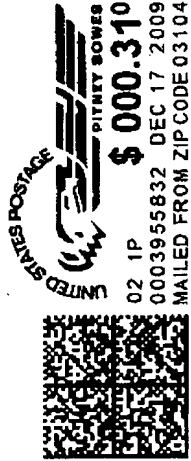
Security Features: Details on back.

BOURQUE & ASSOCIATES, P.A.

NEBS To Reorder: 1-800-225-6380 or www.nebs.com
PRODUCT L4260C USE WITH 6880 ENVELOPE PRINTED IN U.S.A.

16461

Applicant: BALLARSON Atty Docket: BA 111R-001AX
Title: Call Protection System and Method
Filed: SEP 30 1999 Serial No: 091408, 798 Patent No: 6,265,983
SEP 30 1999 Sent 1st Class US Mail on 17-91 Sent Express Mail on 83,370.00
☒ Transmittal letter ~~in separate~~ ☐ Express Mail Cover Sheet ☒ Check # 16961 Amount: 83,370.00
☐ Patent Application consisting of sheets of Specification; pgs. of claims 1.
☐ of Abstract and sheets of Figs. ☐ formal ☐ informal
☐ aration and Power of Atty. ☐ Letter Under Rule 37 CFR 1.53
☐ Assignment Recordation Form ☐ Assignment to:
☐ Application Data Sheet ☐ Priority Document
☐ sheets formal drawings ☐ sheets of informal drawings
☐ Amendment/Response dated consisting of pgs.
☐ Letter to Chief Draftsman ☐ Issue Fee Transmittal Form
☐ Information Disclosure Statement ☐ Citation of Art, Form 1449 pgs. with references
☐ Response to Notice to File Missing Parts ☐ Req. for Corrected Filing Receipt
☐ Copy of Notice to File Missing Parts ☒ 3.5 year Maintenance Fee Letter (2 pgs)
Other: Retention To Accept Unintentionally Delayed Payment of
Maintenance Fee in An Expired Patch + (30.0) Initials BA 111R-001AX



BOURQUE, & ASSOCIATES, P.A.
835 HANOVER STREET, SUITE 301
MANCHESTER, NH 03104